



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

Michael Coutts

Case No.: 61674-02-SP

Petition for Declaratory Statement to
The Florida Department of Insurance

_____ /

ORDER DISMISSING PETITION FOR DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on June 21, 2002, by the Department of Insurance, hereinafter referred to as the Department, from Michael Coutts, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the State Treasurer and Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The State Treasurer and Insurance Commissioner, as State Fire Marshal, has jurisdiction over the subject matter and the parties to this matter.

2. Petitioner asserts that:

A. Many companies provide no training, or very little training, to their fire equipment dealer permittees on the various kinds of fire equipment on which they work.

B. Section 633.061(1), Florida Statutes, states that "A licensee who receives appropriate training shall not be prohibited by a manufacturer from servicing any particular brand of fire extinguisher or preengineered system." (Emphasis supplied).

QUESTION

3. Petitioner requests a declaratory statement on the following questions:

A. Must a fire equipment permittee and licensee have specific training for the systems they are working on either by the equipment manufacturer or an approved class from the State of Florida?

B. Can the manufacturer prohibit a permittee or licensee from working on the manufacturer's equipment if the permittee or licensee has no training, or no "appropriate" training?

C. If the manufacturer cannot prohibit a licensee with "appropriate" Training from servicing their system, what is that training?

4. A response to Petitioner's questions would constitute "...[A]n agency statement of general applicability that implements, interprets, or prescribes law or policy...", which is the definition of a rule under Section 120.52(15), Florida Statutes.

5. Therefore the Department of Insurance intends to engage in negotiated rulemaking under Section 120.54, Florida Statutes.

6. Since the response interpreting Section 633.061, Florida Statutes, which is sought by the Petition for Declaratory Statement constitutes a rule which has not at this time been finalized, and since such interpretation will not be finalized until the rulemaking has been completed,

IT IS, THEREFORE,

ORDERED: That the Petition for Declaratory Statement be, and the same herein is, dismissed, in favor of rulemaking proceedings.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Order Dismissing the Petition for Declaratory Statement is entitled to seek review of this Declaratory

Statement pursuant to Section 120.565, Florida Statutes, and rule 9.110, Florida Rules of Appellate Procedure, because pursuant to Section 120.565, Florida Statutes, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED at Tallahassee, Leon County, Florida, this ____ day of _____, 2002

GREG GAY
Deputy Commissioner, Treasurer and State
Fire Marshal

Copies furnished to:

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